UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CERCLA SECTION 122(h)(1) AGREEMENT

ARKANSAS MUNICIPAL WASTE TO ENERGY SITE

667167

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:	§	SETTLEMENT AGREEMENT
	§	
ARKANSAS MUNICIPAL WASTE TO ENERGY SITE (SITE), OSCEOLA, ARKANSAS	§	U.S. EPA Region 6
	§	CERCLA Docket No. 06-02-12
	§	
TRADEBE TREATMENT AND RECYCLING, LLC, f/k/a POLLUTION CONTROL INDUSTRIES, INC. ("PCI"), and wholly owned subsidiary, TRADEBE TREATMENT AND RECYCLING OF TENNESSEE, LLC, f/k/a POLLUTION CONTROL INDUSTRIES OF TENNESSEE, LLC	§	PROCEEDING UNDER SECTION 122(h)(1) OF CERCLA 42 U.S.C. § 9622(h)(1)
	§	
Respondent	§	

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated to the Superfund Division Director by EPA Delegation No. R6-14-14-D (June 8, 2001). This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

2. This Settlement Agreement is made and entered into by EPA (represented by the U.S. Department of Justice, hereinafter "DOJ") and Tradebe Treatment and Recycling, LLC, formerly known as Pollution Control Industries, Inc. ("PCI"), and its wholly owned subsidiary, Tradebe Treatment and Recycling of Tennessee, LLC, formerly known as Pollution Control Industries of Tennessee, LLC, hereinafter the "Settling Party." The Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Arkansas Municipal Waste to Energy Warehouse Site ("Site") located at 420 West Parsons Drive, Osceola, Arkansas. EPA alleges

that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). EPA Region 6 has information which indicates that hazardous substances, pollutants, or contaminants, have been released or that there is a threat of such a release into the environment at the Site.

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State of Arkansas undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future consistent with the factual information set forth below. This Site has not been placed on National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as implemented under 40 C.F.R. Part 300, Appendix B.

a. In June, 2004, the Arkansas Department of Environmental Quality (ADEQ) formally requested EPA's assistance at this Site. Upon EPA's inspection in 2004, the Site was found to have poor structural integrity and contained approximately 8,302 drums containing CERCLA hazardous substances. Some of the drums were improperly stacked, in poor condition, and leaking. Spills were found on the Site warehouse floor. Moreover, the Site was located in close proximity to a children's daycare facility. EPA found the Site presented an imminent and substantial endangerment to human health and the environment.

b. The Site was formerly associated with the operation of an incineration facility at 100 Incinerator Road, Osceola, Arkansas, which incinerator was permitted by ADEQ. A company named Arkansas Municipal Waste to Energy Company (AMWE) operated the municipal waste incinerator facility under contract with the City of Osceola. In addition to municipal wastes, AMWE was permitted to receive medical wastes, non-hazardous wastes, and industrial wastes. AMWE, the former Site and incinerator operator, ceased operations in 2003, and filed for bankruptcy in 2004.

c. While investigating the incinerator facility due to a community complaint, ADEQ discovered the warehouse Site, located at 420 West Parsons Drive, Osceola, Arkansas. AMWE had stored thousands of drums and other containers of medical and industrial wastes and hazardous substances in the warehouse Site, although it did not have authorization to do so. It is EPA's understanding that AMWE made representations to its customers that it was incinerating drums and containers shipped to it, while these drums and containers, in fact, were stored at the warehouse Site.

d. Some of the drums/containers observed at the Site were in poor condition and spills on the warehouse floor were observed as well. Some of the drums were improperly stored and stacked three-high. In addition, the warehouse structure was in poor condition although the ADEQ took measures to stabilize the roof. The condition of the warehouse generated security concerns requiring the Arkansas State Court to take action during December 2003. The Court ordered the AMWE to secure the Site by locking all doors and boarding up broken windows at

the warehouse Site. EPA also engaged in response measures designed to stabilize the structural integrity of the Site Warehouse from June 2004 through September 2004.

e. ADEQ's March 2003 through April 2004 investigative work, and EPA's 2004 through 2009 investigative work, included the sampling of drums/containers belonging to the Settling Party and other responsible parties, revealed the presence of CERCLA hazardous substances at the Site, including highly ignitible wastes; flammable wastes; corrosive wastes; trichlorofluoromethane; methyl chloride; benzene; toluene; ethylbenzene; xylene; 2-butanone; 1-2-4- trimethylbenzene; 1-3-5- trimethylbenzene; 2-hexanone; styrene; formaldehyde; and radioactive wastes.

f. Prior to EPA's involvement in this removal action, approximately 20,000 drums/containers were stored at the Site. After working with several parties who sent drums to the Site, including the Settling Party, several thousand drums/containers were removed pursuant to ADEQ's enforcement efforts. Due to the presence of a large volume of CERCLA hazardous substances, the presence of highly flammable and ignitible wastes, the poor condition of some of the drums/containers, the poor structural integrity of the warehouse, stored drums/containers stacked three-high, and the close proximity to a children's day care facility, the EPA Region 6 Superfund Division Director authorized an emergency removal action on June 8, 2004. This classic emergency removal action included perimeter air monitoring, inventory, stabilization and sampling of the drums/containers of waste at the Site, and stabilization of the warehouse building at the Site.

g. A small number of drums (i.e., eight) containing low-level radioactive wastes were removed from the Site pursuant to an August 2, 2007, Administrative Order on Consent between EPA and TestAmerica (formerly known as Severn Trent Laboratories). Approximately 200 drums, most of which contained hazardous substances, were removed from the Site pursuant to a July 9, 2008, Administrative Order on Consent between EPA and Thermo Fisher Scientific, Inc.

h. The Settling Party conducted business activities which resulted in the transportation and generation of drums/containers of waste to AMWE for disposal. Many of the Settling Party's drums/containers contained CERCLA hazardous substances. Pursuant to an August 19, 2004 Administrative Order on Consent between EPA and Pollution Control Industries, Inc. (PCI), approximately 7,267 of the Settling Party's drums were removed from the Site under EPA oversight.

i. Approximately 708 drums/containers of waste remain at the Site. Theses remaining drums/containers also will have to be removed from the Site and transported to a permitted facility for disposal. The removal of the remaining drums is necessary in light of the continuing hazards presented by the Site. Future sampling also will be needed pursuant to the classic emergency removal action declared by EPA, to determine whether hazardous substances were released into the soil at the Site. Although no soil sampling has been conducted to date pursuant to the emergency removal action, EPA anticipates sampling will be conducted and the cost of

such sampling will total $200,000.

j. According to EPA records, the drums/containers remaining at the Site have been sampled as a part of EPA 2004-2008 response activities, and such sampling revealed the drums contained CERCLA hazardous substances.

6. EPA alleges that the Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site. The Settling Party transported containers, and arranged for the disposal of containers containing hazardous substances at the Site. Pursuant to CERCLA Section 104(a)(1), 42 U.S.C. 9604(a)(1), these substances have been released and/or there is a substantial threat of their release into the environment.

7. EPA prepared administrative records for the final response actions selected and implemented at the Site. Per cost documentation completed and maintained by the agency, EPA has incurred past response costs at or in connection with the Arkansas Municipal Waste to Energy Site in the amount of approximately $5,351,574.05, through September 30, 2009.

8. EPA and the Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that it is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by the Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean the EPA and the Settling Party.

h. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.. §§6901, et seq. (also known as the Resource Conservation Recovery Act).

i. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settling Party" shall mean Tradebe Treatment and Recycling, LLC, formerly known as Pollution Control Industries, Inc.," PCI," and wholly owned subsidiary Tradebe Treatment and Recycling of Tennessee, LLC, formerly known as Pollution Control Industries of Tennessee, LLC.

k. "Site" shall mean the Arkansas Municipal Waste to Energy warehouse facility located at 420 West Parsons Drive, Osceola, Arkansas.

l. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

m. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through the Effective Date of this Agreement. Costs associated with

future soil sampling to be incurred as part of the classic emergency removal action as described in Paragraph 5 are also included within this definition of past response costs, and estimated to total $200,000.

n. "Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XVIII.

V. PAYMENT OF RESPONSE COSTS

11. Within 30 days after the Effective Date of this Settlement Agreement as defined by Paragraph 39, Settling Party shall pay to the EPA Hazardous Substance Superfund $2,500,000.00. Payment shall be made by Electronic Funds Transfer (EFT) in accordance with current EFT procedures to be provided to Settling Party by EPA Region 6, and shall be accompanied by a statement identifying the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID # 06 SY, and the EPA docket number (06-02-12) for this action, and shall be sent to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID #06 SY and the EPA docket number (06-02-12) for this action.

12. Of the total amount to be paid by Settling Party pursuant to Paragraph 11, $1,735,000 shall be deposited in the EPA Hazardous Substance Superfund and $765,000 shall be deposited in the Arkansas Municipal Waste to Energy Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

13. If Settling Party fails to make any payment required by Paragraph 11 by the required due date, Interest shall begin to accrue on the thirty-first day after the Effective Date of this agreement and shall continue to accrue on the unpaid balance through the date of payment.

14.a. If any amounts due under Paragraph 11 are not paid by the required date, Settling

Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, $8,500 per violation per day that such payment is late.

14.b. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID #06 SY, and the EPA docket number (06-02-12) for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
Arkansas Municipal Waste to Energy Site 06 SY

14.c. At the time of each payment, Settling Party shall send notice that such payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # 06 SY, and the EPA Docket Number (06-02-12) for this action.

14.d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

15. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 11 or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY EPA

17. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. §§ 9607(a), for Past Response Costs as defined in Paragraph 10. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

18. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 17. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

a. liability for failure of Settling Party to meet a requirement of this Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or arrangement for the transportation, treatment, storage, or disposal of hazardous substances or solid wastes at or in connection with the Site after execution of this Settlement Agreement by Settling Party;

19. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States or EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

20. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Arkansas Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

21. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

22. Claims against De Minimis Parties: Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. 9607(a) and 9613) that it may have for response costs relating to the Site against any person that has entered into a CERCLA Section 122(g), 42 U.S.C. 9622 (g) de minimis settlement with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

23. Except as provided in Paragraph 22, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenant Not to Sue By Settling Party), each Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2)-(3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2), 42 U.S.C. § 96513(f)(2).

24. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122 (h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are those Past Response Costs specifically defined in Paragraph 10. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purpose of Section 113(f)(3) (B) of CERCLA, 42 U.S.C. § 9613 (f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved its liability to the United States for Past Response Costs.

25. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, or by EPA, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VII.

27. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 24, and that, in any action brought by the United States related to the "matters addressed," such Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XI. SITE ACCESS

28. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by Settling Party, Settling Party shall, commencing with the Effective Date of this Agreement, provide EPA and its representatives and contractors, access at all reasonable times to the Site or to such other property, for the purpose of conducting any response activity related to the Site, including but not limited to, the following activities:

a. monitoring, investigation, removal, remedial or other activities at the Site;

b. verifying any data or information submitted to EPA;

c. conducting investigations relating to contamination at or near the Site;

d. obtaining samples;

e. assessing the need for, planning, or implementing response actions at or near the Site;

f. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XII (Access to Information);

29. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION

30. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

31. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public

may be given access to such records without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

33. Until 10 years after the effective date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

34. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records, and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XIV. CERTIFICATION

35. The Settling Party hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and this it has fully complied with any an all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, and Section 3007 of RCRA.

XV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Chief, Enforcement Assessment Section (6SF-TE)
U.S. Environmental Protection Agency, Region 6
Superfund Division
1445 Ross Avenue
Dallas, TX 75202-2733

As to Settling Party:

Alberto Diez, Chairman
Tradebe Treatment and Recycling, LLC., f/k/a Pollution Control Industries, Inc. ("PCI"), and Tradebe Treatment and Recycling of Tennessee, LLC, f/k/a Pollution Control Industries of Tennessee, LLC
4343 Kennedy Avenue
East Chicago, Indiana 46312

XVI. INTEGRATION

37. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

XVII. PUBLIC COMMENT

38. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

39. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 38 has closed and that comments received, if any, do not require modification of or withdrawal by the United States or EPA from this Settlement Agreement.

XIX. ATTORNEY GENERAL APPROVAL

40. The Attorney General or his/her designee has approved this settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

The Undersigned Party enters into this Administrative Settlement, CERCLA Docket No. 06-02-12, Arkansas Municipal Waste to Energy Site.

The undersigned representative of the Settling Party certifies that he is fully authorized to enter into the terms and conditions of this Order and to bind the party he represents to this document.

Agreed this 20th day of January 2012.

For: Tradebe Treatment and Recycling, LLC, f/k/a Pollution Control Industries, Inc. "PCI," and Tradebe Treatment and Recycling of Tennessee, LLC, f/k/a Pollution Control Industries of Tennessee, LLC (Settling Party)

Alberto Diez, Chairman
Tradebe Treatment and Recycling, Inc., f/k/a Pollution Control Industries, Inc. ("PCI"), and Tradebe Treatment and Recycling of Tennessee, LLC, f/k/a Pollution Control Industries of Tennessee, LLC
4343 Kennedy Avenue
East Chicago, Indiana 46312

The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No.06-02-12, In the Matter of Arkansas Municipal Waste to Energy Site.

It is so ORDERED and Agreed this 13th day of August 2012.

For U. S. Environmental Protection Agency

Pamela Phillips, Acting
Superfund Division Director, Region 6
U. S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

The Undersigned Party enters into this Administrative Settlement, CERCLA Docket No. 06-02-12, In the Matter of Arkansas Municipal Waste to Energy Site.

For: U.S. Department of Justice

May 22, 2012

Bruce S. Gelber
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

May 22, 2012

Elizabeth F. Kroop
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